IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.118 OF 2005
IN
SUMMONS FOR JUDGMENT NO.146 OF 2003
IN
SUMMARY SUIT NO.3084 OF 2002

Jagdish R. Parekh ....Appellant

V/s.

Natwarlal C. Mehta ....Respondent

Mr.Subodh Joshi i/b J.K. Majithia for the Appellant.

None for the Respondent.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 3RD MARCH, 2005.

P.C. :

. Heard advocates.

2. The main submission of the learned counsel for the Appellant is that a mere receipt acknowledging the debt cannot be the foundation of the summary suit. He argued that the summary suit being a special category, the cause of action must arise under Order XXXVII Rule 2 of the Code of Civil Procedure.

3. We are unable to accede to this submission as much as the point is concluded by the decision of this Court in *Mrs.Dinaz Adi Bharucha v. Rajendra P. Ashar & Ors. 1999 (3) B.C.R. 501* wherein it was held that such a suit would be maintainable as summary suit. The two other decisions relied upon by the learned counsel for the Appellant in *Purnima Jaitly v. Ravi Bansi Jaisingh, 2004 (1) Mh.L.J. 114* and in *Yogendra Patwardhan v. Khandelwal Hermann Electronics Ltd., 1989 (1) B.C.R. 96,* are inapplicable to the facts of the present suit. Besides the Defendant has admitted unconditionally and unequivocally the liability in reply to the notice but prayed for some time because of the difficulty in the business.

4. The only other submission raised by the learned counsel for the Appellant is about the limitation, but as pointed out by the learned single Judge the same is without any substance. Therefore the order of the learned single Judge granting conditional leave on deposit of Rs.5.00 lacs is confirmed. The Appellant is given further eight weeks time to deposit the amount.

5. Appeal is accordingly disposed of.